

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
CTIA Petition for Declaratory Ruling that)	DA 03-211
Wireline Carriers Must Provide Portability to)	
Wireless Carriers Operating Within Their)	
Service Areas)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. Introduction

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communications Commission's (FCC, Commission) Public Notice¹ seeking comment on the January 23, 2003 Petition for Declaratory Ruling (Petition) filed by the Cellular Telecommunications & Internet Association (CTIA). OPASTCO is a national trade association representing approximately 500 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All OPASTCO members are rural telephone companies as

¹ *Comments Sought on CTIA Petition for Declaratory Ruling That Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas*, CC Docket No. 95-116, Public Notice, DA 03-211 (rel. Jan. 27, 2003).

defined in 47 U.S.C. §153(37). Nearly one half of OPASTCO's members provide some type of wireless service. OPASTCO holds a seat on the North American Numbering Council (NANC) and actively participates in that body's deliberations. For the reasons discussed below, OPASTCO urges the Commission to deny CTIA's Petition.

II. The Petition fails to suggest any means to replace the critical functions served by rate centers

CTIA's Petition requests that the Commission declare that wireline carriers must port their customers' numbers to a commercial mobile radio service (CMRS) provider whose service area overlaps the wireline carriers' rate center.² Yet the Petition correctly notes that the Commission previously agreed with the NANC's assessment that "location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns."³ Numbers must be assigned to a particular rate center for several reasons, such as to determine which calls are local, and which calls are toll. Of course, calls that require transport by an interexchange carrier (IXC) generate access costs, which must be recovered through lawful access charges.

If a number assigned to a particular rate center is ported to another carrier's facilities outside of that rate center, then any calls initiated by that number may become toll calls, even if they were previously local. Furthermore, customers calling the ported number may find that the call is suddenly subject to toll charges, which were not imposed prior to porting. Customers would be subject to undue confusion and frustration by these unexplained alterations. Clearly, this conflicts with the statutory definition of "number portability," which requires, among other things, that consumers be able to retain

² Petition, p. 1.

³ *Ibid.*, p. 5 (cite omitted).

numbers without impairment of “quality, reliability, or *convenience*.”⁴

If the Petition were granted, rate center databases would be contaminated, as numbers originally assigned to a particular rate center where a wireless carrier does not have resources, would be handled by equipment located at another rate center where a wireless carrier has facilities. This new rate center may be located within a differing local access transport area (LATA) or state boundaries, adding to the confusion and obscuring what intercarrier compensation regime and jurisdictional rules should apply. The Petition should be rejected, as it offers no solution to the considerable administrative and jurisdictional problems and associated costs it would impose.

III. The Petition incorrectly asserts that a definition has been established for a CMRS provider’s local service area as it applies to number portability

CTIA’s Petition inappropriately points to a decision in a separate proceeding to claim that “the Commission has established the [Metropolitan Trading Area (MTA)] as the local calling area for CMRS, permitting CMRS providers to use a single switch to serve radio facilities over a very wide geographic area.”⁵ However, the decision cited by CTIA does not purport to be related to number portability, even in the context of wireless-to-wireless portability. On the contrary, the decision to define CMRS providers’ “local service area” at the MTA level was explicitly limited to “the purposes of applying reciprocal compensation obligations under section 251(b)(5).”⁶ The Petition’s implication that the decision to base CMRS providers’ reciprocal compensation obligations at the MTA level somehow equates to a finding that wireline-to-wireless

⁴ 47 U.S.C. § 153(30) (emphasis added).

⁵ Petition, p. 5.

⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, para 1036 (1996).

number portability also applies at the MTA level is a transparent *non sequitor*. As CTIA understandably makes no attempt to justify this claim, the Commission should reject the Petition.

IV. The Petition is a thinly-veiled attempt to obtain location portability, which the Commission has previously rejected

As noted above, CTIA recognizes that “location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns.”⁷ CTIA claims that its “Petition is unrelated to location portability, which the Commission has declined to mandate.”⁸ Yet at the same time, CTIA declares that “porting must be done throughout the CMRS service area.”⁹ This demonstrates that the Petition is an attempt to port numbers from an ILEC’s rate centers to any location within a CMRS provider’s MTA. As stated above, the new location could quite possibly be in a new LATA or state. Clearly, the Petition is on its face a request for location portability.

The Commission properly addressed the location portability issue in the LNP First Report and Order:

To avoid the consumer confusion and other disadvantages inherent in requiring location portability, however, we believe state regulatory bodies should determine, consistent with this Order, whether to require carriers to provide location portability. We believe the states should address this issue because we recognize that “rate centers” and local calling areas have been created by individual state commissions, and may vary from state to state. To the extent rate centers and/or local calling areas vary from state to state, the degree of location portability possible without causing consumer confusion may also vary.¹⁰

⁷ Petition, p. 5.

⁸ *Id.*, p. 17, fn. 54 (citing *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, paras. 172-87 (LNP First Report and Order)).

⁹ *Id.*, p. 17.

¹⁰ LNP First Report and Order, para. 186.

The Commission has already determined that the issue of location portability should be decided by the states. The Petition fails to justify why federal rules on this matter should now pre-empt states, which are charged with establishing rate centers for areas under their jurisdiction. Therefore, the Commission should deny the Petition.

V. The Petition only provides for one-way portability, which is not competitively neutral

CTIA's Petition seeks to require an ILEC to port numbers out of their assigned rate centers to a CMRS provider, even if the CMRS provider has no numbering resources located at the rate center in question. But the Petition contains no provision for the reverse. If ILECs are required to port numbers to CMRS providers, then CMRS providers should also be required to port numbers to ILECs.¹¹ Number portability was established to promote competition. The one-way portability called for by the Petition would clearly establish a competitive advantage for CMRS providers through one-sided regulation and must therefore be rejected.

VI. The Petition fails to account for the circumstances of rural ILECs

The problems outlined above would be disproportionately burdensome for rural ILECs due to their significant administrative costs and rural ILECs' lack of economies of scale. Yet CTIA's assessment of rate centers served by ILECs does not account for the situations of rural carriers. The Petition states that "wireless carriers typically serve the same service area as a LEC by establishing a presence in one rate center where a LEC on average will have eight rate centers."¹² This is not the case for rural ILECs, which often

¹¹ However, even two-way portability would clearly amount to location portability if, as CTIA urges (Petition, p. 1), the CMRS provider would not be required to establish numbering facilities rated within the geographic boundaries of the ILEC rate center.

¹² Petition, p. 5.

have only one rate center. Typically, this rate center has no direct interconnection with any CMRS provider.¹³ Nor does the Petition in any way account for the additional burdens and expenses imposed on rural ILECs by requiring them to port numbers to any CMRS provider whose signal overlaps a rural ILEC's service area. At the very least, the Commission must carefully consider and account for the impact of CTIA's request on small, rural ILECs before imposing such requirements on them.

VII. Conclusion

CTIA's Petition is without merit for several reasons: 1) It offers no alternative to the vital functions performed by rate centers; 2) it offers no legitimate rational for equating MTAs with rate centers for the purpose of number portability; 3) it is an unjustified attempt to obtain location portability, contrary to the Commission's earlier decision; 4) it would establish only inequitable one-way portability; and 5) it fails to account for the different circumstances of rural ILECs. Therefore, the Commission should deny CTIA's request for a declaratory ruling requiring wireline carriers to port their customer's telephone numbers to a CMRS provider whose service area overlaps the wireline carrier's rate center.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL**

¹³ The current regulatory environment provides CMRS carriers with an incentive to avoid negotiating interconnection agreements with rural ILECs, contrary to Congressional intent. *See* OPASTCO comments, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, DA 02-2436 (fil. Oct. 18, 2002); and reply comments (fil. Nov. 1, 2002).

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CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail on this, the 26th day of February, 2003, to those listed on the attached sheet.

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SERVICE LIST
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